BEFORE THE ARBITRATOR

In the Matter of the Petition of

WISCONSIN PROFESSIONAL POLICE ASSOCIATION/LEER DIVISION

For Final and Binding Arbitration Involving
Law Enforcement Personnel in the Employ of

LANGLADE COUNTY (SHERIFF'S DEPARTMENT)

Case 91
No. 58214 MIA-2282
Decision No. 29916-A

Appearances:

Mr. Richard T. Little, Bargaining Consultant, Wisconsin Professional Police Association, Law Enforcement Employee Relations Division, 9730 West Bluemound Road, Wauwatosa, Wisconsin 53226, on behalf of the Association.

Ruder, Ware & Michler, S.C., Attorneys at Law, by Mr. Jeffrey T. Jones, 500 Third Street, Suite 700, Wausau, Wisconsin 54402-8050, on behalf of the County.

ARBITRATION AWARD

Wisconsin Professional Police Association/LEER Division, hereinafter referred to as the Association, and Langlade County, hereinafter referred to as the County or Employer, having met on two occasions in collective bargaining in an effort to reach an accord on the terms of a new collective bargaining agreement to succeed an agreement, which by its terms was to expire on December 31, 1999. Said agreement covered all full-time sergeants and full-time deputies in the Sheriff's Department, excluding the Sheriff, Chief Deputy Sheriff, unsworn personnel, clerical, seasonal, temporary, and all managerial, supervisory and confidential employees. Failing to reach such an accord, the Association, on November 19, 1999, filed a petition with the Wisconsin Employment Relations Commission (WERC) requesting the latter agency to initiate arbitration, pursuant to Section 111.77(3) of the Municipal Employment Relations Act, and

following an investigation conducted in the matter, the WERC, after receiving the final offers from the parties, issued an Order, on June 6, 2000, wherein it determined that the parties were at an impasse in their bargaining, and wherein the WERC certified that the conditions for the initiation of arbitration had been met, and further, wherein the WERC ordered that the parties proceed to final and binding arbitration to resolve the impasse existing between them. In said regard the WERC submitted a panel of five arbitrators from which the parties were directed to select a single arbitrator. After being advised by the parties of their selection, the WERC, on June 21, 2000, issued an Order appointing the undersigned as the Arbitrator to resolve the impasse between the parties, and to issue a final and binding award, by selecting either of the total final offers proffered by the parties to the WERC during the course of its investigation.

Pursuant to arrangements previously agreed upon, the undersigned conducted a hearing in the matter on September 7, 2000, at Antigo, Wisconsin, during the course of which the parties were afforded the opportunity to present evidence and argument. The hearing was not transcribed. Post-hearing briefs were filed and received by November 14, 2000. The record was closed as of the latter date.

THE FINAL OFFERS OF THE PARTIES: [1]

The final offer of the Association is as follows:

1. ARTICLE II – OVERTIME

   D. Compensatory Time Off

   Delete the last sentence of the second paragraph: This compensatory time off . . . between the parties.

2. ARTICLE 18 – HOLIDAYS

[1] Also attached as Appendix "A" and "B."

Amend to read: Each . . . 80 hours . . . schedule
Good Friday delete (afternoon)

3. APPENDIX "A"

Effective 1-1-2000, 3.5 percent increase across the board.
Effective 1-1-2001, 3.5 percent increase across the board.

4. POST EMPLOYMENT HEALTH PLAN (PEHP)

The County shall adopt the Post Employment Health Plan (PEHP) as provided by PEBSCO. The employer shall following the completion of the installation of the new computer system, or by January 1, 2001, whichever is sooner, deduct $25.00 per pay period from each member of the bargaining unit to be deposited into their individual accounts.

The employer shall deposit any and all accumulated sick leave, vacation, holiday or compensatory time, as provided by contract, that would be due to the employee upon retirement, separation or termination from the County.

The employees agrees that at no time in the future will they make a request to have the employer pick up the cost of the deduction into the PEHP account.

The final offer of the County is as follows:

1. Article 11 – Overtime, Paragraph D, Compensatory Time Off, delete third sentence in second paragraph (i.e., delete sunset provision).

2. Article 18 – Holidays, delete "76 hours" in first paragraph and insert "80 hours" and delete "afternoon" from Good Friday holiday.

3. Article 27 – Duration, revise as appropriate to reflect one year contract encompassing 2000 contract year.

4. Appendix "A" – Salary Schedule, revise to reflect 3.25% wage increase for each position listed for the 2000 contract year.

BACKGROUND:

Hearing in the instant case was held on September 7, 2000. Both parties presented

exhibits in support of their positions. Representatives from each side reviewed and explained their exhibits to the Arbitrator. Additionally, each side presented one witness who testified on their behalf: Tim Crossin, National Technical Consultant, on behalf of the Association, and Kim Gross, Langlade County Finance Director, on behalf of the County

POSITIONS OF THE PARTIES:

Association's Position

The Association in arguing that its final offer is more reasonable than the Employer's, discusses each statutory criterion as it relates to the final offer of the parties on the issues in dispute.

Lawful Authority

The Association argues that it is clear, and no one has claimed otherwise, that the Association's final offer is within the Employer's legal authority to meet. Therefore, this criterion is not a factor in this case.

Stipulations of the Parties

This criterion, it is argued, should be given no weight because only two contractual changes were agreed upon, one a matter of housekeeping and the other an additional four hours of holiday pay. The latter, it is argued, is clearly justified by both internal and external comparables and therefore should not negatively impact the Association's final offer.

Interest and Welfare of the Public

It is the Association's position that its offer best serves the public because it recognizes the need to maintain the morale and health of its law enforcement officers and thereby retain the

best and most qualified officers. In this regard, the Association argues that because of the unique service performed by law enforcement officers, they must be compared to other law enforcement officers in similar departments. The Association avers that when its final offer of wages and the PEHP program are compared, their proposal should prevail because it provides the addition of a nationally recognized plan that benefits both the employees and the employer and has been provided by numerous Wisconsin public employers. Further, it is argued, the plan is without cost to the Employer, other than a small amount for start up, yet will in the future save it money because it will not be required to contribute FICA taxes on any amount contributed to the plan (about $50 per employee per year). It is argued that the other component of this criterion, financial ability of the Employer to meet the costs of the offer, should not be considered a factor since neither party raised it as an issue.

Internal Comparables

It is the Association's position that internal comparables should not be given primary consideration in this case because it is more appropriate to consider law enforcement personnel with other law enforcement personnel. Further, it is argued, even if internal comparisons are made, they should be given limited weight because each unit is different and while settlements internally may be similar, they are not usually identical. Thus, total uniformity, it is contended, is not controlling.

External Comparables

The Association first argues that, contrary to the Employer's position, the previously

established comparables established by Arbitrator Gil Vernon [2] should be adopted and utilized in this case. They are Forest, Lincoln, Marathon, Menominee, Oconto, Oneida, Price, Shawano, Taylor and Vilas counties, and the City of Antigo. Nothing, it is claimed, has changed with regard to this list of comparables to cause the creation of a new grouping. Thus, they should remain the most appropriate and the one utilized by the Arbitrator.

Using said comparables, the Association argues that the average lift of the settlements (excluding Menominee County) is 3.68% for 2000 and 3.21% for 2001, or an average of 3.45% per year. This, it is argued, more closely conforms to the Association's final offer of 3.5% than the County's offer of 3.25%.

The Association notes that the acceptance of either final offer will result in a loss of one position rank in the year 2000. If Forest County and Oneida County maintain their relative position in the year 2000, Langlade County, according to the Association, will have moved from 5th position in 1998 to 8th position in the year 2000. The Association asserts that there is no evidence to justify the Employer's final offer and such a result.

Further, with respect to the cost of the package costs of the two offers, the Association claims that using the "cost forward" method the parties differ by 0.21% for 2000. The Association's cost for 2001 is under 3%. Clearly, it is argued, these figures are under the current inflationary levels and substantiates the Association's final offer as the most reasonable.

As to the duration of agreement issue, the Association asserts that a two-year agreement is much more preferable otherwise the parties will immediately be back in bargaining. Such instability, it is argued, in labor relations is not constructive. The Association claims it is not

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[2] Langlade County (Sheriff's Department), Dec. No. 22203-A (10/85).

trying to gain an economic advantage to the detriment of the County. All other units have settled on a two or three year basis as well as all external comparables. Equity and good labor relations, the Association claims, supports its two-year proposal.

Cost of Living

The Association argues that the proper measure of the amount of protection against inflation to be afforded the employees should be determined by what other comparable employers and associations have settled for. In this regard, the Association restates its position that external comparables support its wage proposal and package and that its package cost is below current CPI figures. Thus, its offer is more reasonable.

Overall Compensation and Changes in Circumstances

The Association's position with the remaining two criterion, overall compensation and changes in foregoing circumstances, is that there has been no changes with respect to the latter and that there is nothing in the overall compensation of Langlade officers that would give cause to find the Association's final offer unreasonable.

Based on all of the above, the Association submits that the Association's final offer must be considered more reasonable and should, therefore, be adopted by the Arbitrator.

County's Position:

Internal Comparables

It is the County's position that in deciding this case significant weight should be given to the fact that its final offer is consistent with the internal settlements in Langlade County. It is argued that internal wage settlements and fringe benefits are proper factors for consideration under criteria "d" and "h" of Section 111.70(6), Stats. In support of its position the County cites

a number of prior interest arbitration awards holding that internal consistency, especially with respect to benefits, is a widely accepted concept and given great weight.

With respect to fringe benefits, the County contends that among the five unionized employee groups in Langlade County (Courthouse, Professionals, Correction Offices, Dispatchers, Highway and Deputies) it has always maintained internal consistency and that all receive the exact same fringe benefits. The Association, the County argues, is proposing a new fringe benefit, PEHP, that no other County unit has. Other units settled at 3.25%, without a PEHP, which according to the County, shows how reasonable those settlements are and, likewise, how reasonable the County's final offer here is. The County argues that a new benefit should occur with all County units and should be negotiated.

The County also asserts that the County's, not the Association's, wage offer will maintain consistency among its internal voluntary settlements. It is argued that the Association's wage offer breaks the wage settlement pattern in 2000 and attempts to establish a pattern of a 3.5% wage increase for 2001. All of the other units settled for 3.25% in 2000 and no unit has settled for 2001. If the Association's offer is accepted, the County contends there will undoubtedly be hard feelings among the units that voluntarily settled and got less. Further, it would create a

situation where a small unit of deputies would be setting the pattern for 2001; a case where the "tail would be wagging the dog." The Employer argues that there is no reason to break the settlement pattern which is where the parties probably would have voluntarily agreed to had they reached a voluntary settlement.

External Comparables

The County maintains that the six contiguous counties, with the exception of Marathon County, are the proper comparables to be utilized by the Arbitrator. They are: Forest, Lincoln, Menominee, Oconto, Oneida and Shawano. The Association is proposing the same counties plus Marathon, Price, Taylor and Vilas counties and the City of Antigo.

The County acknowledges that in the only prior arbitration with this unit the Arbitrator used the comparables offered by the Association. However, citing excerpts from the decision, it argues that Marathon was only included because both parties agreed to include it as a comparable and that Price and Vilas counties were added by the Arbitrator because Taylor was one of the comparables. Here, it is argued, there is no agreement to add Marathon County and, therefore, it should not be included. It is a highly industrialized county, much larger, and has a much better economy than Langlade County. Further, there is no basis to add Price or Vilas counties because the County is not proposing to add Taylor County as was the case in the first arbitration. Further, it is argued, that proximity of similar sized counties should be given great weight in selecting comparables which the County's set of comparables does and the Association's does not.

As to the actual comparison of the two offers with the comparables, it is the County's position that wage rates as opposed to wage settlements should be compared. In making said comparisons the County notes that utilizing its comparable pool Langlade County deputies are paid 68 cents above the 1999 deputy average wage rate. Utilizing the Association's comparables, the Langlade County deputies at $15.27 per hour are paid 16 cents above the 1999 average wage rate of $15.11 per hour.

The County contends that under the County's wage offer of 3.25% in 2000, Langlade County deputies again will exceed the average wage rate for its comparables by 32 cents.

Utilizing the Association's comparables the County's offer produces a $15.77 per hour rate which is identical to the average wage rate of the comparables of $15.77 per hour. The County notes that Forest and Oneida counties have not settled for 2000, but that it is likely the average wage rate will decline because of the lower than average wage rate paid to Forest County deputies. Moreover, it is claimed that the Langlade County deputies would not lose their ranking under the County's final offer even if Forest County settled at 5% plus wage increase for 2000 which means the Association's offer for more than the internal comparables or more than external comparables is not justified.

In 2001 the Association proposes a 3.5% increase. Five of the Association's eleven comparables have not settled. Three of the six have settled for 3.5%. The average wage rate is $15.77 which the County argues is what the County is proposing to pay the deputies in 2000. Under the Association's offer the wage rate would go to $16.35 per hour, or $58 above the average rate of its settled comparables. According to the County there is no justification for such a request, especially since there is no catch-up agreement to be made.

Further, the County points out that Langlade County deputies hiring rate is increased because they are paid 4.23 hours of automatic overtime each pay period. Using 2,190 hours per year as a work year, this would raise the average rate in 1999 to $15.65 per hour and in 2000 to $16.16 per hour which is substantially higher than the average rate of the comparables. In light of this, it is argued, the Association's offer is clearly excessive.

The PEHP

The County argues that the Association has not shown a need for the PEHP plan. It is argued that arbitrators have held that the party seeking to change existing language or fringe

benefits must show a compelling need, that its proposal reasonably addresses the need and that a sufficient quid pro quo has been offered.

Here, the County claims, no need has been shown. The deputies have a generous retirement benefit as well as a good sick leave benefit. They receive a maximum of 110 days of accumulated sick leave of which upon retirement they receive a pay out of 50% in cash or use same to pay for health insurance premiums.

The County argues that none of the internal comparables have a PEHP plan and only five of the Association's eleven comparables have such a plan. As such, it is argued that the Association has not demonstrated a strong, compelling need for implementation of the PEHP plan. They have an excellent retirement benefit and a sick leave pay-out benefit that provides an excellent means for employees to pay for health insurance premiums upon retirement.

Even if the Arbitrator finds the Association has shown a need, it is the County's position that the Association has failed to meet the third criterion and that is a quid pro quo. It is argued that to the contrary, the Association does the opposite and asks for a wage increase larger than that received by the County's other bargaining units. According to the County, some sort of quid pro quo is necessary since the County is expected to bear all of the administrative cost involved in making deductions and making a check to Nationwide in New Jersey. Moreover, the County does not have the technological software capability to make another paycheck deduction and will not have such a system in place by January 1, 2001, the date the Association proposes to implement the PEHP plan.

In addition to the above, it is the County's position that PEHP contributions proposed are excessive and implementation of the plan will undermine the County's ability to address large health insurance premium increases in the future. The County reasons that it now pays 100% of

the monthly insurance premium costs which may very well have to change because of astronomical increases in premium cost. The County intends to discuss premium sharing measures with all of its bargaining units in negotiations for successor 2001 collective bargaining agreements. Implementation of the PEHP plan for the deputies will impact on said attempt because the Association will undoubtedly argue that the employees cannot afford a premium contribution or other cost sharing measures to help pay for current health insurance benefits because they are paying $25 per paycheck ($650 per year) to fund health insurance premiums in future years after they retire.

Moreover, it is argued that this matter is best left for the parties to negotiate themselves especially since this was first raised in negotiations this time around and that the parties only bargained on two occasions before the Association petitioned for arbitration.

Total Package

Section 111.77(6)(f), Stats., requires the consideration of overall compensation, which the County argues supports its position. Citing prior arbitration awards, the County argues that this

is an important criterion and that Langlade County deputies receive an exceptional combined total wage and benefit package that is not so easily found in either the County or Association's external comparable pool.

Interest and Welfare of the Public

It is argued that what is in the best interest of the public is a wage increase that matches what is affordable by the County residents and reasonable based on internal and external comparable wage rates.

In this regard, the County points out that it must by law limit its tax levy at the 1999 rate. It is argued that Langlade County is considerably smaller in size and economic value than neighboring counties and that its ability to raise dollars to fund County operations is not similar to the more prosperous neighboring counties.

Also, the County contends that Langlade County's economic condition, including the lower equalized value, higher than average unemployment, lower than average income, higher tax rate and the limited growth experienced by the County, support adoption of its final offer. The economic conditions in the County play a vital role in determining what the County can truly afford with regard to wage increases. The County concludes that considering the County's economic condition and financial constraints, the County's less expensive 2000 wage offer must be regarded as the more reasonable.

Duration

The County bases its one-year contract proposal on the fact that all other unit collective bargaining agreements expire on December 31, 2000. The County wishes to coordinate all of the contracts so that they will all commence negotiations for 2001 and hopefully maintain the same duration. This, the County claims, will maintain efficiency and consistency during the bargaining process.

Additionally, the County would like to discuss cost sharing of insurance premiums or changes in benefits in the next round of negotiations. The County has always provided the same health insurance benefits to all of its bargaining unit employees. By adopting a one-year agreement, the County argues that it will be able to bargain with all of the units at the same time and insure uniformity among the units. The County reasons that a PEHP plan could be discussed

at that time as a possible trade off.

Based on all of the above, the County urges the Arbitrator to select its final offer as the more reasonable.

DISCUSSION:

Section 111.77(6) of the Wisconsin Statutes directs the Arbitrator to give weight to the following arbitral criterion:

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

> (6) In reaching a decision the arbitrator shall give weight to the following factors:
>
> (a) The lawful authority of the municipal employer.
>
> (b) Stipulation of the parties.
>
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet the costs.
>
> (d) Comparison of wages, hours and conditions of employment of the employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
>
> 1. In public employment in comparable communities.
>
> 2. In private employment in comparable communities.
>
> (e) The average consumer prices for goods and services, commonly known as the cost of living.
>
> (f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

In applying the above criteria, the Arbitrator must determine which offer is more reasonable based on the evidence presented. In addressing the criteria, neither party argues that criteria (a), (b), (g) or (h) are really relevant in this case. With respect to the remaining criteria, the Association primarily relies on external comparables and the Employer on internal comparables in support of their respective positions. Also, both argue that their offer best serves the interest and welfare of the public. In either case, however, it is clear the Employer has the financial ability to meet the small cost difference between the two final offers. Additionally, the Employer relies on the overall compensation factor and the Association on the cost-of-living factor in support of their positions.

The Parties' Offers

The parties agree that the issues that remain in dispute are wages, the addition of a PEHP plan, and duration of the collective bargaining agreement. The Association proposes a two-year agreement with wage rate increases of 3.5% and 3.5%, and the adoption of a PEHP plan with each employee contributing $25 per pay period. The County proposes a one-year agreement with a wage rate increase of 3.25%.

To properly evaluate the parties' final offers vis a vis the statutory criteria, the Arbitrator must first decide the threshold issue of what constitutes the appropriate comparables. In short,

the Association argues for the same set of comparables established by Arbitrator Gil Vernon in the parties' previous arbitration award. [3] Contrariwise, the County argues that even the arbitrator in that award acknowledged that the comparables adopted was not fully satisfactory, and further, while Marathon County was included, it was done so because both parties included same in their list of comparables.

Arbitrators recognize that the use of a consistent set of comparables is considered beneficial to the collective bargaining process because it adds stability to the parties' relationship. For said reason it is a well-established principle among arbitrators that once a set of comparables

has been established as appropriate in a prior arbitration case(s), it will not be disturbed unless there has been a sufficient change to support a persuasive argument for change.

I have reviewed Arbitrator Vernon's prior Award, subsequent awards involving Langlade County and the parties argument regarding same. It seems while Arbitrator Vernon and subsequent Arbitrators Malamud [4] and Zeidler [5] have discussed Marathon County's appropriateness, they all ended up including it in the appropriate comparables noting that while it was a much larger County, it nevertheless was contiguous and should be utilized. In this regard, I agree with Arbitrator Vernon's analysis wherein he stated, "While the inclusion of Marathon County is somewhat bothersome, because of its larger size, it is geographically proximate, and

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[3] Ibid. It is noted that Arbitrator Vernon issued another interest arbitration award involving Langlade County, but did not discuss the appropriate comparable pool. Langlade County (Highway), Dec. No. 25435-A (2/24/89).

[4] Langlade County (Professionals), Dec. No. 28106-A (5/95).

[5] Langlade County (Corrections/Dispatchers), Dec. No. 28242-A (5/22/95).

understandably has a certain degree of influence on Langlade County in the area of labor markets, etc. Thus, it should be given some weight. In addition, its larger size is somewhat offset by the inclusion of Menominee, which is disproportionately smaller."

The County argues that the non-contiguous counties of Taylor, Price and Vilas should not be used because the only reason Vernon included Price and Vilas counties was because the County had proposed Taylor County. He added Price and Vilas to Arbitrator Vernon to establish a regionally based group. This is true, but instead of adding Price and Vilas counties, Vernon could have simply thrown out Taylor County. He did not because given the choice he found it more appropriate to have a "regionally based group representing reasonably similar jurisdictions in North Central portion of the State . . ."

Duration

There is merit with both parties' position with respect to duration. On the one hand, the Association's offer of a two-year contract allows the parties to enjoy the fruits of their bargained agreement without having to immediately return to the bargaining table. The bargaining process can be, and often is, a long drawn out process and with one year agreements it can be a continuous process. [6] It is for said reason multi-year agreements have become very desirable by both parties, both in the public and private sectors and generally recognized by arbitrators to be preferable. It adds stability to the parties' relationship.

On the other hand, the County's one-year offer would establish a common expiration date for all five unionized employee groups in Langlade County. This would promote internal

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[6] The instant case is a prime example. The parties have been without a contract for the entire year 2000.

consistency especially in the area of benefits and would minimize the whiplash effect in bargaining. The County has always had uniform benefits among its employees and it would like to continue same by negotiating with all of the units, separately, but for the same year(s).

It is noted, however, that while the County wants to establish a common expiration date, all other internal groups are coming off two and three year agreements. There are no internal or external comparables that are under one-year agreements.

All in all, while the County raises some good points, the Arbitrator finds the Association's offer to be slightly favorable.

PEHP

The Association, which the County opposes, is proposing to implement a PEHP for the deputies. Generally stated, the purpose of PEHP is to enable the accumulation of funds for the purpose of paying health insurance premiums to employees upon retirement. The amounts contributed to the fund, either by the Employer or the employees, and the amounts distributed to the employees are free from federal income and FICA taxes. The Association is proposing that the County deduct $25 per each deputy's biweekly paycheck and forward a check to the administrators of PEHP, Nationwide Retirement Solutions, to be deposited in their accounts.

The Association's proposal is really a minimal proposal in that no employer contribution is required and, additionally, contains a guarantee that at no time in the future will the bargaining unit make a request that the Employer pick up the cost of the deduction into the PEHP account. Given the minimal impact of its proposal and, as claimed by the Association, its obvious benefit to employees and the Employer, the Association argues that the interests and welfare of the parties is best served by adoption of its plan. The County argues that no other bargaining unit has this benefit and granting same would break the County's practice of maintaining uniform

benefits to all employees.

In analyzing the parties' position regarding the PEHP, it seems the County's main opposition to the Association's proposal is not so much the merits of the plan, but more its timing. The County wants (1) to maintain uniform benefits and (2) negotiate with all of the units at the same time (but separately) and use the PEHP as a trade off issue for changes to their health insurance plan.

While the County's game plan is understandable, the value it places on the PEHP seems exaggerated. Inasmuch as the instant proposal requires only employee contributions and an assurance that the Employer will never be asked to contribute, there is no reason to assume that the other units, most of whose employees are lower paid and who normally retire at an older age, will be interested in such a PEHP program. Further, there is no reason to assume such a minimal proposal of a benefit would be sufficient to gain any meaningful concessions in the area of health insurance. Thus, as such, this does not create a situation where the "tail is wagging the dog." The Arbitrator does not view that the County would be placed at a significant disadvantage in negotiating with its other bargaining units if the Association's final offer is selected. The Arbitrator would agree with the County if the Association's proposal required Employer contributions, but it does not. Thus, the County's use of the PEHP as a benefit to trade off for concessions has not been realistically impaired.

The County, however, argues that the Association's proposal requiring employee contributions of $25 per paycheck is excessive and will impact on the issue of health insurance cost sharing in future bargaining with the deputies. Its reasoning is that when it comes time to ask employees to contribute towards the monthly health insurance premium costs, the Association will undoubtedly argue that employees cannot afford to do so because they are

paying $25 per paycheck for PEHP. The Arbitrator does not find the County's argument convincing. How the employees want to spend their money is their business. Here, they have made a choice that they would rather spend $650 per year paying for a future benefit than using it for discretionary spending. Further, with respect to the County's logic, what would be the difference if the employees, instead, would have spent the same amount of money purchasing additional life insurance protection. In the end, any proposal made by the County in the area of employee health insurance premium contribution, or any other issue for that matter, will have to rise or fall on its own merits, not on how employees choose to spend their earnings.

Lastly, the County argues that the Association is proposing a new benefit and, therefore, the Association must show a need for same; that its proposal satisfies such a need; and that a quid pro quo is offered.

I agree with, and have applied, said principle in cases where a significant change has been proposed. Here, the change to add the PEHP benefit is not significant. All the Employer is required to do is the administrative task of deducting the money and forwarding it to Nationwide Retirement Solutions in New Jersey. No contribution is required. There is no set-up fee or ongoing expense of fee for the Employer. The Employer's liability is limited to what it agrees to contribute. The only cost is the labor cost of setting up the deduction and forwarding a check to New Jersey. This, however, is offset by the savings PEHP provides the Employer in the form of FICA tax (7.65%) savings. The amount contributed to the plan, whether by employees or the Employer, is not subject to FICA tax. Thus, the Employer will save approximately $50 per employee per year which in a short time will cover its start-up costs. The benefit to the employee, of course, is that they pay no federal taxes on their contribution and their benefits, upon retirement, are federal tax free.

In summary, the Association proposal allows federal tax free accumulation of contributions and pay out of benefits, requires no contribution by the Employer, has no ongoing fees for the Employer, no Employer liability, and provides a tax savings to the Employer enough to offset any administrative costs. Because the Association's proposal is a minimal PEHP and benefits both the employees and the Employer, the Arbitrator finds that it best serves the interests and welfare of the public. It enhances employee morale and at the same time provides a tax saving to the Employer.

The County argues, however, that no other County bargaining unit has this benefit and this would be a case of the "tail wagging the dog." The Arbitrator disagrees. First, the Association's proposal does not take effect until January 1, 2001, not year 2000. So, there is no difference among the units in 2000. Second, for reasons discussed above, it is likely other units will not be asking for the Association's plan because most earn less and are less likely to contribute $25 per paycheck and because they normally retire at an older age than law enforcement personnel. The plan itself is not as meaningful as it would be to the deputies. This would not be a case of the "tail wagging the dog." If the other units propose a PEHP but with Employer contributions, the Employer, of course, can attempt to extract whatever concessions it deems appropriate. The adoption of the Association's offer here would not place the Employer at a disadvantage in that regard.

With respect to external comparables, five of the comparables have similar plans.

Lastly, the County argues that while it is upgrading its payroll software system the system will not be in place by January 1, 2001, the effective date of the Association's proposal. To do it manually, it is contended, would not be efficient and would require labor cost.

The County's ability to make the deductions is a concern, but it could make the same

argument in 2001. The cost of upgrading its software was at $2,000 - $3,000 back on February 9, 2000. The Employer estimated that the system could be running by June 1, 2001. [7]

While the undersigned is sensitive to the County's administrative concern, the Arbitrator is of the opinion that the delay in getting its software system upgrade should not prevent the adoption of an otherwise reasonable proposal. The deductions can be done manually until then and probably paid with the FICA tax savings. [8]

Seldom is a benefit proposed that benefits both parties without a much net cost to the Employer. This is such a proposal.

The Arbitrator concludes that on this issue alone the Association's offer is the more reasonable of the two offers.

Wages

The wage difference between the parties is .25% in 2000 and, of course, whether or not there should be a second year to the collective bargaining agreement. The County proposes a one-year contract and the Association two years with a 3.5% increase the second year.

It cannot be disputed that the internal comparables favor the County. There are four other organized units and they all have settled for 3.25% for 2000, the County's offer here. The external comparables are in dispute with each claiming their comparables favor their offer.

To begin with, the Arbitrator for reasons discussed earlier, has adopted the Association's set of comparables and, therefore, the comparables utilized will be the following: Forest,

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[7] Kim Gross the County Financial Director testified to same.

[8] Apparently, the payroll system is being upgraded even if the Association's offer is not selected. Thus, it is a cost that should not be charged against the proposal.

Lincoln, Marathon, Menominee, Oconto, Oneida, Price, Shawano, Taylor and Vilas counties and the City of Antigo. It should be noted, however, that comparisons are somewhat hard to make and are far from perfect because not all comparables have settled for 2000 and even less for 2001. Therefore, to make comparisons meaningful, the Arbitrator will compare the parties' final offers with only those comparables that have settled. In making external comparisons, the Arbitrator notes that both parties view a comparison of wage rates to be more important than a comparison of percentage increases.

Of the eleven external comparables, all have settled for 1999, nine in 2000, and six in 2001. The following is a comparison with the nine comparables that have settlements for 2000.

	End of 1999	End of 2000
Shawano	15.52	16.15
Taylor	15.54	16.00
Oconto	15.21	15.82
Vilas	14.75	15.42
Price	14.98	15.44
Menominee	10.96	12.60
Marathon	16.64	17.17
Lincoln	16.19	16.78
Antigo	15.88	16.51
Average	15.07	15.77
Langlade	15.27	15.80 Assoc. 15.77 County
Difference	+.20	+.03 Assoc. 0 County
Rank	6/10	7/10 Assoc. 7/10 County

The above indicates that from 1999 to 2000 Langlade County has lost .17¢ (Association) to 20¢ (County) to the comparables' average and one position rank. However, two special

circumstances must be taken into consideration in determining the significance of said change.

One, the average of the comparables is skewed because of what appears to be a 14.96% catch-up increase in year 2000 ($10.96 to $12.60) granted to Menominee's five deputies. If one factored in a 4% settlement instead of a 14.96% catch-up increase, the average of the comparables would drop to $15.63. Without the catch-up, then, Langlade when compared to the averages would have gone from +.20 in 1999 to +.17 (Association) and +.14 (County) in 2000.

Second, although not as significant, Oconto's 4% settlement in 2000 apparently included a 1% quid pro quo for an insurance change. The Arbitrator points this out only because it is Oconto County that in 2000 moved ahead of Langlade in ranking to 6/10 by .02¢ (Association) and .05¢ (County).

When the parties' offers are viewed taking into consideration the above, it is apparent that neither offer greatly impacts Langlade County's standing with its comparables. On the whole, of the two final offers, the Arbitrator concludes that the Association's 2000 offer is slightly more favorable when compared to external comparables.

In determining the importance of internal versus external comparables, the Arbitrator recognizes the different nature of law enforcement work, and as such law enforcement employees merit comparison with employees in comparable units performing similar work. But, internal comparables cannot be ignored on said basis. There still must be a convincing showing that in a case like here where the Employer has offered the same wage increase of 3.25% as the well-established clear pattern of internal settlements, deviation is warranted.

Here, there is no compelling reason to deviate from the internal pattern of settlement. This is not a catch-up situation or a case where acceptance of the Employer's offer, based on internal settlements, would so negatively impact the Association's relative standing with its

external comparables as to outweigh the internal comparables. The bottom line is that the difference between the two final offers for 2000 is only .03¢ per hour and the impact on Langlade's average wage rate compared to its comparables, as analyzed above, is not significant.

Also, important to consider is that an award of 3.5% in 2000 for this unit would be viewed negatively by the other four internal units, who settled for 3.25%, and encourage them to "hold out" in the future instead of settling voluntarily. This is especially true considering the fact that this unit is the second smallest unit (14 employees) of the five units. [9] Further, for 2001, acceptance of the Association's final offer would be viewed by the other units as establishing a floor in next year's negotiations.

The situation described above, i.e., the size of the unit setting the pattern of internal settlements, constitutes one of the "factors . . . normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact finding, arbitration . . ." (criterion (6)(h)). Here, the Association, a unit of 14 employees, by its two-year proposal would be breaking the pattern in 2000 and setting a pattern for 2001, for the remaining 124 employees. Normally and traditionally, in such cases it is one of the larger units that sets the pattern. While this reality of bargaining is not absolute, there is good reason for it and any deviation must be for good reason. Otherwise, you have a situation where the "tail is wagging the dog." [10]

It should be noted that this is not to say the Association's offer of 3.5% in 2001 is

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[9] The Courthouse unit has 57 employees, Highway 33 employees, Courthouse professionals 21 employees, and Jailer/Dispatchers 13 employees.

[10] The undersigned in Marathon County, Dec. No. 29519-A (10/99) refused to accept the Employer's internal settlements as a pattern of settlement because to do so would be allowing the "tail to wag the dog."

determined to be unreasonable. In reviewing the six settled comparables in Association Exhibit 15 and projecting a reasonable settlement in the unsettled County comparables, it may very well be that a 3.5% wage increase will be the average settlement. Whatever the case, the parties will be able to address that issue immediately, probably with the knowledge of additional settlements for 2001.

Other Criteria

The Employer also argued the overall compensation factor and the Association the cost of living factor. However, the impact of said factors on the parties' offers here is not significant enough to affect the outcome generated by the other criteria discussed above.

Conclusion

Of the three issues, duration, PEHP and wages, the Arbitrator finds the Association's duration and PEHP proposals more reasonable, but not the wages. It would be preferable to have a two-year agreement to promote stability in the parties' bargaining relationship, but to do so would require the Arbitrator to select the Association's offer and have the second smallest unit not only break the clear pattern of internal settlements for 2000, but also set the pattern for all units for 2001. The Arbitrator finds that the differences in the parties' two final offers does not warrant such an outcome. Since the Arbitrator determines the wage issue to be the most significant of the three issues, the Arbitrator concludes that in considering the total final offer of each party in context of the statutory criteria, the evidence and arguments presented by the parties, the offer of the County is

more reasonable and, therefore, should be favored over the offer of the Association, and in that

regard, the Arbitrator makes and issues the following

AWARD

The County's final offer is to be incorporated in the 2000 collective bargaining agreement between the parties, along with those provisions agreed upon during their negotiations, as well as those provisions in their expired agreement which they agree were to remain unchanged.

Dated at Madison, Wisconsin, this 19th day of January, 2001.

Herman Torosian, Arbitrator